IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2006

CORAM

THE HONOURABLE MR. JUSTICE A.KULASEKARAN

Second Appeal No.1551 of 1996

S.Parthasarathy ... Appellant/Plaintiff

Vs.

1. Durai @ Govindasamy
2. S.Srinivasan @ Kannan
3. S.Ramachandran
4. Vijayalakshmi ... Respondents/Defendants

Second appeal against the judgment and decree dated 31.08.1995 made in A.S.No.175 of 1994 on the file of IV Additional Judge, City Civil Court, Madras confirming the judgment and decree dated 23.11.1993 made O.S.No.2891 of 1990 on the file of VII Assistant City Civil Court at Madras.

For appellant : Mr.M.Kamalakannan

For respondents : Mr. P.Manoj Kumar, for R.3
No appearance for R.1, 2 and 4.

J U D G M E N T

The plaintiff, who has lost his case before both the Courts below, is the appellant herein.

2. The plaintiff filed the suit O.S.No.2891 of 1990 on the file of VII Assistant Judge, City Civil Court, Chennai against the defendants, who are none other than his brothers and sister, for permanent injunction restraining them from interfering with his peaceful possession and enjoyment of the suit property.

3. The facts which are relevant for the disposal of the second appeal are as follows:- The plaintiff has purchased the suit land on 14.06.1969 under Ex.A.1 – Sale Deed. Admittedly, at the time of the said purchase, the plaintiff was unemployed. It is also not in dispute that the plaintiff got employment only in the year 1980 and he was appointed as Kalasi in the Southern Railway. On 17.12.1967, the father of the parties died and later on, their mother also died on 18.10.1999. It is the case of the plaintiff that the defendants had forcibly obtained the

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signature of the plaintiff in Exs.A.13 and A.14 viz., partition deed and agreement respectively. Hence, he gave a complaint to the police under Ex.A.17 on 14.03.1990. Admittedly, no action was taken on the said complaint given by the plaintiff against the defendants. Alleging interference by the defendants, the suit had been instituted for permanent injunction.

4. The case of the defendants is that the plaintiff had no source of income at the time when the land was purchased under Ex.A.1 on 14.09.1969. The father of the parties was the only earning member and he had purchased the same by paying the sale price in instalments, in the name of the plaintiff, since the plaintiff was the only major son as well as eldest among other sons and daughter. It is also the case of the defendants that after purchase of the land, they have sold some of the ancestral properties under Exs.B.9 to B.11 - sale deeds, dated 13.05.1974, 03.05.1974 and 15.04.1974 respectively and utilised the sale consideration for construction of the building, which was constructed in the land purchased under Ex.A.1. It is the further case of the defendants that they have paid the instalments payable to the Society, where the land under Ex.A.1 was purchased.

5. Before the trial Court, the plaintiff examined himself as P.W.1 and one Chandrasekaran as P.W.2 and marked Exs.A.1 to A.43. On the side of the defendants, the first defendant was examined as D.W.1 and one Seetharaman was examined as D.W.2 and Exs.B.1 to B.25 were marked.

6. Considering the oral and documentary evidence adduced by both parties, the trial Court dismissed the suit, against which, the plaintiff filed A.S.No.175 of 1994 and First Appellate Court also dismissed the appeal confirming the judgment and decree of the trial Court. Hence, the second appeal.

7. Learned counsel appearing for the plaintiff / appellant has submitted that though so many documents were produced by the defendants / respondents to show that they have made contributions to construct the building in the suit mentioned property, it is the plaintiff / appellant, who has mortgaged the property on 02.09.1989 under Ex.A.11 and the amount was invested for the construction of the building; that the plaintiff / appellant has let out the building to tenants, which is evident from Exs.A.8 and A.9 and he has been receiving the rents from them, which aspect was not considered by the trial Court.

8. Learned counsel appearing for the defendants / respondents submitted that the plaintiff / appellant had no source of income to purchase the land and considering the fact

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that he was the eldest son and attained majority at that time, Ex.A.1 – sale deed was registered in his name. However, the amount payable for the purchase of the suit property was met by their father; that after the death of their mother on 18.10.1999, the elder relatives conducted a meeting, where Ex.A.13 – partition deed dated 05.11.1989 was entered into between the parties and according to it, the plaintiff / appellant agreed to take southern portion of the land and northern portion of the land was allotted to the defendants / respondents; that pursuant to Ex.A.13, on the same day, Ex.A.14 was also entered into between them; that the third defendant based on Ex.A.14, has paid the amount as agreed to by him and though the said amount was received by the plaintiff / appellant, he has failed to execute the relevant deed; that the documents Exs.B.9 to B.11, marked by the defendants / respondents, prove the fact that ancestral properties were sold and the sale consideration fetched from the said sales was invested for construction of the building; that though it is alleged that there was a lease deed, the same was not prepared on requisite stamp papers, but it was cooked up only for the purpose of filing the case; that both the Courts below, after taking into consideration the above said facts, rightly refused to grant injunction, since the same cannot be issued against a co-sharer and prayed for dismissal of the second appeal.

9. I have considered the rival contentions made by both the counsel and perused the materials on record.

10. In a suit for bare injunction, it is sufficient to decide as to who is in possession of the suit property at the time of filing of the suit. However, Court cannot confines its duty only to that extent; but has also to see as to whether the plaintiff establishes prima facie right over the property.

11. Applying the said ratio, it is absolutely necessary to see as to when the suit property was purchased. Admittedly, the plaintiff / appellant was unemployed at the time of purchase of the land under Ex.A.1 and the only earning member was the father of the parties. According to defendants / respondents, the suit property was purchased only by their father, but the sale deed was executed in the name of the plaintiff / appellant, admittedly, he had no independent source of income at that time. It is also an admitted fact that the plaintiff / appellant got employment only in the year 1980 as Kalasi in the Southern Railway. It is the case of the defendants / respondents that under Exs.B.9 to B.11 – sale deeds, some of the ancestral properties were sold and the sale consideration was utilised for the purpose of constructing the building.

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12. In this context, we have to look into the evidence of plaintiff / appellant as P.W.1. In his cross-examination, the plaintiff / appellant had admitted that the existing building was constructed only in the year 1975. Defendants / respondents marked Ex.B.12 to B.18 - receipts, which were issued by the Society, to show that the suit land was purchased on instalment basis and respondents paid some instalments. The above said documents, viz. Exs.B.12 to B.18 are admittedly prior to the filing of the suit. Though the plaintiff / appellant is stated to have lodged complaints under Exs.A.19 to A.27 to the police, which are subsequent to the filing of the suit, it is not disputed by the appellant that based on the said complaints, no action has been taken against the defendants / respondents.

13. When we look into the above said facts, it is crystal clear that the plaintiff / appellant was not in exclusive possession and enjoyment of the suit property at the time of filing of the suit and if at all he was only in joint possession along with defendants / respondents. Exs.A8 and A9 are tenancy agreements entered into between the appellants and tenants written in unstamped papers and the Courts below rightly rejected them as inadmissible in law. Simply because the enjoyment of the plaintiff is rendered less beneficial that would not entail him to obtain an injunction unless he can show that there is a legal duty on the part of the defendants towards him and non-performance of it, the enjoyment of his property is materially affected. The trial Court as well as the first appellate Court taking into consideration the above said facts, have rightly declined the relief of injunction sought for by the plaintiff / appellant. This Court while exercising its power under Section 100 C.P.C. finds no substantial question of law involved in the second appeal. Hence, no interference is warranted and the second appeal is dismissed. No costs.

sbi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Registrar, City Civil Court, Madras (with records).

+ one cc to Mr.M.Kamalakannan, Advocate Sr.No.11968
+ one cc to Mr.P.Rajendran, Advocate Sr.No.12019.

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